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April 7, 2022

**VIA ECF**

The Honorable Paul G. Gardephe  
United States District Court  
Southern District of New York  
40 Foley Square, Room 2204  
New York, New York 10007

Re: *Thompson et al. v. Elev8 Center NY, LLC et al.*, 20 Civ. 09581 (PGG) (JLC)

Dear Judge Gardephe:

We represent Defendants Elev8 Center NY LLC (“**Elev8 Center**”), Urban Recovery, LLC (“**Urban Recovery**”), and Donna Mae Depola (together, “**Defendants**”) in the above-referenced matter. We write in response to Plaintiffs’ April 7, 2022 letter requesting leave of the Court to file their Second Amended Complaint (“**SAC**”). (Doc. No. 68.). Defendants respectfully request that the Court deny Plaintiffs’ request, which disregards the Federal Rules of Civil Procedure, the Local Rules for the Southern and Eastern District of New York (“**Local Rules**”), and the Individual Rules of Practice of Judge Paul G. Gardephe – Civil Cases (“**Individual Rules**”).

As set forth in Defendants’ April 6, 2022 letter requesting that the Court dismiss Plaintiffs’ SAC, or, in the alternative, schedule a premotion conference on Defendants’ anticipated motion to dismiss, Plaintiffs’ SAC is procedurally improper. (Doc. No. 67.). Specifically, Plaintiffs ignored Fed. R. Civ. P. 15(a)(2) by filing their SAC without leave of the Court or consent of the Parties.<sup>1</sup> Though Plaintiffs claim to have believed that the Honorable James L. Cott had granted leave to Plaintiffs to amend the complaint, Local Rule 72.1(d) clearly requires final disposition of a matter on which a magistrate judge has issued a report and recommendation to be made by a District Judge.

Now, in their post hoc request for leave to file their SAC, Plaintiffs again ignore the Court’s rules which require a pre-motion conference for motions to amend pleadings. Individual Rules IV(A). Plaintiffs have also failed to submit a request for such pre-motion conference, as is also required by Your Honor’s Individual Rules. *Id.* Because Plaintiffs continue to eschew the rules and procedures set forth in the Federal Rules of Civil Procedure, Local Rules, and Your Honor’s Individual Rules, Defendants respectfully request that the Court deny Plaintiffs’ request for leave to file their SAC and reject Plaintiffs’ SAC.

As noted in our previous letter, should the Court decline to reject the SAC, Defendants request that the Court schedule a premotion conference for Defendants’ anticipated motion to dismiss and set a deadline for Defendants to submit a letter outlining the basis for the motion in advance of the conference for the Court’s consideration.

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<sup>1</sup> That Plaintiffs sought Defendants’ consent and filed the Second Amended Complaint without receiving it (or leave from the Court), signifies Plaintiffs’ disregard of Fed. R. Civ. P. 15(a)(2) despite knowing its requirements.



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We appreciate Your Honor's attention to this matter.

Respectfully Submitted,  
/s/ Shivani Poddar

cc: All attorneys of record via ECF